

DATE: October 14, 2014

TO: Alderman Marcia Johnson, Chair  
Members of the Zoning and Planning Committee

FROM: Amy Sangiolo, Ward 4, Alderman-at-Large

RE: #237-14

MEETING DATE: October 15, 2014

Cc: Board of Aldermen  
Planning and Development Board

## SUMMARY

Petition #237-14 proposes a zoning amendment requesting a temporary moratorium on one and two family full and partial residential demolitions where the replacement structure will be greater than 120% of the size of the original structure. Alderman Sangiolo recognizes the tremendous impact this would have on residents and businesses but believes it irresponsible to ignore the problems that Newton residents, colleagues on the Board, members of the FAR working group and even Planning staff have identified and wait until Phase 2 of Zoning Reform is completed.

## RESPONSE TO PLANNING DEPARTMENT'S OCTOBER 10<sup>TH</sup> MEMORANDUM

As has been stated in previous memorandum by Alderman Sangiolo and stated in several committee meetings, the proposed temporary moratorium is to allow for a specific amount of time to address the following issues:

1. Clarify and revise the definition of two-family dwelling unit and the definition of attached dwellings;
2. Create regulations that require front door orientation to the street for all new construction and discourage or prohibit the side facing construction and protruding garage or "snout house" construction
3. Create a neighborhood context design and site plan review process for all new construction and expansion that would result in a structure that is 20% more than the existing structure for which demolition is requested
4. Adopt additional zoning measures to deal with by-right development that will retain neighborhood character, preserve existing structures, trees and landscapes, and preserve moderately priced housing stock.

The overall goal is to get better control over the by-right development that occurs after demolition and get the zoning issues associated with demolitions addressed sooner rather than wait for Zoning Reform Phase 2 which is already 2 years behind schedule and another 3 year process to complete.

## RESPONSE TO PLANNING DEPARTMENT'S OCTOBER 10<sup>TH</sup> MEMORANDUM

Staff makes a number of incorrect and misleading assertions that need to be addressed. The following is a section-by-section response.

### Existing controls on demolition

Staff suggests that the concern Alderman Sangiolo and proponents have expressed about the increased trend in the number of demolitions and the likely continuation of that trend is “misleading” and further states: “proponents suggests that there are no controls currently in place to prevent wholesale demolition throughout the City.” Neither Alderman Sangiolo nor opponents have made such an assertion. The only control on demolition lies with the Historic Commission. As correctly stated by Planning Staff, the City’s Demolition Delay Ordinance requires homeowners to go through the Newton Historic Commission for full and partial demolitions of structures that are 50 years or older. The Newton Historic Commission can make a finding on whether the structure is preferably preserved or not and can issue a one year delay (or in the case of a structure listed on the National Register – an 18 month delay on demolition). However, Planning Staff left out several important pieces of information regarding the Historic Commission process:

1. Not all structures get reviewed by the Newton Historic Commission. The Newton Historic Preservation Planner in conjunction with the Chair of the Commission, determine whether or not the structure should even be reviewed by the full Commission.
2. After 4-month period, an applicant can request and receive a waiver from the demolition delay.
3. After the demolition delay has expired, the structure can be torn down – protection and prevention of the resource ends.

The Newton Historic Commission recognizes that problems exist with their current process and are in support of two items currently on the Zoning and Planning Committee’s docket that have been identified as issues to be addressed under this proposal. The items are:

#265-14 ALD. BLAZAR, YATES AND DANBERG requesting to amend Section 22-50 to increase the time period for determinations of historical significance to 30 days, and to increase the time period for hearings, rulings and written notice on appeals from historical significance determinations to 60 days; to amend Section 22-50 to increase the time period to hold a public hearing as to whether or not a historically significant building or structure is preferably preserved to 60 days; to amend Section 22-50 to increase the demolition delay period for buildings and structures on or eligible for listing in the National Register of Historic Places to 30 months; and to amend Section 22-50 to

increase the demolition delay period for all other preferably preserved buildings or structures to 24 months; and

#266-14 ALD. BLAZAR, YATES AND DANBERG requesting to amend Section 22-50 to require that in the event there is a transfer of legal or beneficial ownership of a preferably preserved property during the demolition delay period, the full demolition delay period will restart from the date of the transfer of ownership; and further requesting to amend Section 22-50 to require that in the event a transfer of legal or beneficial ownership of a preferably preserved property occurs after the expiration of a demolition delay period but prior to the issuance of a demolition permit, no demolition permit shall issue until the new owner complies with the procedures of Section 22-50(c)(5).

The Newton Historic Commission's letter of support for these items is attached to this document.

### Enforcement

Staff raises the issue of enforcement. They ask what would happen if there are no plans available for a replacement at the time the demolition permit is submitted. Alderman Sangiolo's response is that the applicant would not be granted a demolition permit unless they also can submit replacement plans showing that it meets the criteria. Planning Staff goes on to suggest that there is no guidance regarding a situation where the replacement plans show a structure that is less than 120% of the original, "but changes are made during the construction period and the final structure exceeds that threshold." Alderman Sangiolo is puzzled by this as she has been under the impression that the current system does not allow for changes to a permit that has been approved without a subsequent approval. She questions whether that is in fact the current practice implemented by the Inspectional Services Department and poses the following question: If a building permit is issued for a set of plans and there are changes made to those plans that exceed what is allowed, what does the Inspectional Services Department do?

Finally, in the enforcement section of the Planning Department's memo, staff makes the following statement: "But many residents, who have planned their retirement based on selling their property in Newton for fair market value in the next year, could be adversely affected." Was this statement meant to be in this section of the memorandum?

### Additional Density

First, staff is incorrect about the applicability of this moratorium. While it was originally proposed to exclude special permits, the discussions in the Zoning and Planning Committee suggested that there was sentiment that the proposal should apply to special permits and was amended accordingly.

Second, the proponents of the proposal have never asserted that the proposal would somehow trump the Chapter 40B process. As long as the City of Newton fails to meet the 10% affordable housing requirement and as long as the City is reluctant to adopt a

Housing Production Plan and meet the goals of such plan, the City remains limited in the amount of control it can exert over 40B projects.

Finally, staff makes the following statement: “Finally, while staff understands the desire for clarification on the design parameters of two-family dwellings that tend now to look like more like townhouses rather than the traditional double-deckers or “Philadelphia-style: two-family structures, this problem developed over time in a piecemeal manner and will take time to be resolved in a meaningful and comprehensive way.” It has been over a year since the following items dealing with this very issue were first docketed and nothing has been done to address these issues.

#222-13 ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, DANBERG, FISCHMAN & JOHNSON proposing to amend the definitions of "Common roof connector", "Common wall connector", and "Dwelling, two-family" in Chapter 30, Section 30-1 of the City of Newton Zoning Ordinances.  
[06/07/13 @ 1:31 PM]

#129-13 ALD. HESS-MAHAN proposing to amend and/or clarify definition and provisions for granting a special permit for “attached dwellings” in the City of Newton Zoning Ordinances, Chapter 30-1, 30-8(b)(13) and 30-9(b)(5).  
[05/25/13 @5:14 PM]

Since that time, two-family structures have been built, changing the streetscape, setting precedents and the altering the context of the neighborhoods that Zoning Reform Phase 2 is supposed to preserve and protect.

#### Special Permit exemption

This issue is addressed above.

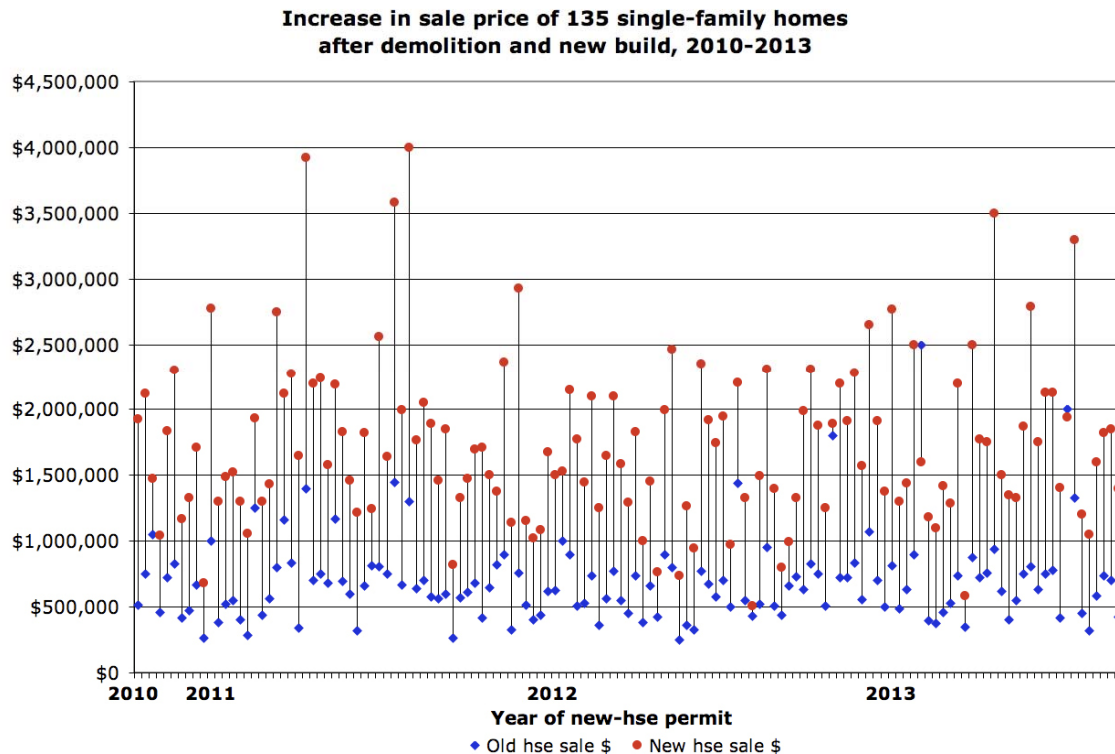
#### Neighborhood character

Staff describes the distinct character of several of our 13 villages. However, first they state: “But change will come in every neighborhood whether we plan for it or not,” suggesting we can’t control change and then go on to state: “So we need to thoughtfully plan for the change that we as a community, want to see in each of our neighborhoods.” Huh?

#### Moderately-Priced Housing

Staff suggests that there is little or no housing stock in Newton being offered for sale at the price proponents are considering as moderately priced - \$800,000. Currently, a crude search on Hammond Real Estate’s website produced 53 single- and multi-family homes available at or below \$800,000. Trulia lists 26 single-family homes at or below \$800K on its website and Realtor.com lists 88 single- and multi-family homes available at or below \$800K.

The housing stock that does come to the market that is \$800K or less are the ones that when demolished and torn down, are mostly converted to larger homes and sell far above the \$800K price point as shown in the chart below.



### Alternative Solutions to the Identified Problems

Staff continues to refuse to address the issues identified in this proposal now even though they acknowledge there is “a legitimate concern over the loss of character and diversity of housing in the City of Newton.”

They refer to the work of the Floor Area Ratio Working Group as having been tasked with the difficult issue of reforming our FAR rules. Yet, even the FAR Working Group suggested the need for changes to the rules they came up with. The Planning Department’s report dated March 12, 2012 summarized the working group’s thoughts – consensus on some items and disagreement on others. The recommendation at that time, was to continue to study the issue and track the impacts those new rules were having on development in the City. When the issue was taken up again in July 2013 and November 2013, the Planning Department recommended that consideration of changes to the FAR regulations be considered in the context of the comprehensive zoning reform Phase 2 efforts.

Many of us on the Board and in the community have bought into the notion of a Comprehensive Zoning Reform effort. This proposal is not designed to interfere with

that effort. The intent of this proposal to get some kind of control over the issues we are seeing with by-right development while we wait for the comprehensive, village by village zoning reform effort to unfold. We have been waiting over 2 years to get to Phase 2 and Phase 2 is anticipated to take 3 years to complete.

## CONCLUSION

Whether you support a temporary one-year moratorium or not the zoning issues identified within this proposal need to be addressed now. The Board of Aldermen used to have control of the zoning process but we abdicated our responsibility to the Administration in the name of Zoning Reform. We need to take back some control while that Zoning Reform process runs its course. We need to do something to preserve and protect that very context and character that the Zoning Reform Phase 2 process is supposed to protect.